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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

Item 51 ID#4047
RESOLUTION E-3900
November 19, 2004

R E S O L U T I O N

Resolution E-3900. Pacific Gas and Electric Company requests approval of a new renewable resource procurement contract with Florida Power and Light Energy Co., LLC for the repowering of an existing Altamont Pass wind farm.

By Advice Letter 2562-E Filed on October 7, 2004.

SUMMARY

Pacific Gas and Electric's request for a new renewable resource procurement contract with Florida Power and Light Energy Co., LLC is approved.

Pacific Gas and Electric Company (PG&E) filed Advice Letter (AL) 2562-E on October 7, 2004, requesting Commission review and approval of a new renewable energy contract with Florida Power and Light Energy Co., LLC (FPL) that would allow for the repowering of an existing 17.72 megawatt (MW) wind facility in the Altamont Pass area of Northern California. The repowered wind facility will use state-of-the-art turbines that will result in increased electricity production at a reduced contract price.

The new contract will replace an existing Interim Standard Offer 4 (ISO4) contract between PG&E and FPL.

PG&E states that the price structure of the new contract will decrease PG&E's exposure to the price volatility of natural gas and will create greater price certainty. The new contract confers benefits to both PG&E and the developer, as discussed below.

PG&E demonstrated that the new contract confers price and other benefits in the ratepayers' interest. PG&E's Procurement Review Group Members either supported or did not oppose approval of the contract.

PG&E made a sufficient showing that the new contract is in the ratepayers' interest because it meets PG&E's obligation to procure renewable resources at a price significantly below the price benchmark adopted in Decision (D.) 02-08-071. The new price is also substantially lower than the existing contract price. The members of PG&E's Procurement Review Group (PRG) either supported or did not oppose the approval of the new contract.

The Commission's action to make public certain confidential information is in the public interest.

Certain contract details were filed by PG&E under confidential seal. This resolution finds that certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583 and General Order (G.O.) 66-C, and considered for possible disclosure, should be disclosed.

BACKGROUND

The Commission provided guidance to the utilities on procuring renewable energy resources prior to full implementation of the Renewables Portfolio Standard (RPS) Program.

D.02-08-071 authorized the utilities to enter into procurement contracts between the effective date of the Decision and January 1, 2003. The Decision adopted an interim reasonableness benchmark of 5.37 cents per kilowatt-hour for procurement contracts.

On August 13, 2003, the Assigned Commissioner in Rulemaking (R.) 01-10-024 issued a ruling, "Assigned Commissioner's Ruling Specifying Criteria for Interim Renewable Energy Solicitations", which specified criteria for any further renewable energy procurement by the utilities prior to full RPS implementation.

The Assigned Commissioner's Ruling (ACR) set forth general process requirements:

1. A utility must abide by the terms of the Commission's first RPS implementation Decision (D.03-06-071).
2. Utilities may engage in bilateral negotiations or may issue a competitive solicitation (request for offer (RFO)) to receive bids.
3. Issuance of an interim RFO by a utility does not constitute filing of a RPS procurement plan under the terms of D.03-06-071.
4. The utilities are allowed to "roll over" any under-procurement in 2003 into the Annual Procurement Target (APT)¹ for 2004 without penalty. A decision not to issue an RFO prior to full RPS implementation will not waive this immunity. Conversely, any contract signed as a result of a bilateral negotiation or an RFO, and approved by the Commission, should count toward the APT.
5. Following PRG member review of any proposed contracts, the utility may submit those contracts for Commission approval via Advice Letter.

The Assigned Commissioner's Ruling also set forth criteria for interim procurement:

1. Any renewable procurement in the interim period must not anticipate the use of any Supplemental Energy Payments (SEPs) to be awarded by the California Energy Commission (CEC) pursuant to Public Utilities Code Sec. 383.5(d).
2. A solicitation must not anticipate the creation of the Market Price Referent (MPR) under development in the RPS process. Internal market benchmarks developed by the utility for

¹ The APT is the minimum amount of renewable generation the utility must procure each year to meet its RPS requirement, subject to the flexible compliance mechanisms authorized in D.03-06-071.

- bid evaluation are appropriate for preliminary evaluation, but should not be made public in the RFO or at any point in the solicitation process, and should not be referred to as the MPR.
3. Any internal benchmarks and details of their development should be provided to the Procurement Review Group when the Preliminary Evaluation of submitted bids is performed, and to the Commission when any proposed contracts are ultimately submitted for approval.
 4. Any RFO must clearly stipulate up front precisely how the utility will calculate adders for transmission upgrades and integration costs, and how the utility will assign capacity values and payments to as-available resources.

PG&E's Procurement Review Group had the opportunity to review the contract.

In D. 02-08-071, the Commission required each utility to establish a "Procurement Review Group" (PRG) whose members, subject to an appropriate non-disclosure agreement, would have the right to consult with the utilities and review the details of:

1. Overall transitional procurement strategy;
2. Proposed procurement processes including, but not limited to, RFO; and
3. Proposed procurement contracts before any of the contracts are submitted to the Commission for expedited review.

The PRG for PG&E consists of: California Department of Water Resources, California Energy Commission, Coalition of California Utility Employees, Natural Resources Defense Council, Office of Ratepayer Advocates (ORA), and The Utility Reform Network (TURN). PG&E provided documentation to its PRG members regarding this contract on September 28, 2004 with the direction to raise concerns with the appropriate PG&E representatives. The PRG members either supported or did not oppose the contract.

Parties have commented on the need to address treatment of repowered facilities in Phase II of the Renewable Portfolio Standards proceeding.

During RPS Phase II pre-hearing comments, Parties requested Commission guidance with regard to treatment of repowered facilities in the RPS RFO. Repowered wind facilities may have unique characteristics that are not always conducive to participation in an RPS RFO. For example, the end of a wind facility's existing ISO4 contract term may not correspond with the bidding schedule of an IOU's RFO.

Approval of this resolution will allow PG&E and FPL to enter into a renegotiated bilateral contract, outside of the RPS RFO, that otherwise would not have been renegotiated. The increase in generation at a lower average contract price per megawatt than the original ISO4 pricing will benefit ratepayers.

Approval of this Resolution, does not establish a pre-determined process for handling repowered contracts in future RPS RFO's. This matter will be addressed in Phase II of the RPS proceeding.

NOTICE

Notice of AL 2562-E was made by publication on the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

PROTESTS

There were no protests to this Advice Letter.

DISCUSSION

The Commission's action to make public certain confidential information is in the public interest.

The Energy Division recommends that the certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583 and General Order (G.O.) 66-C, and considered for possible disclosure, should be disclosed as the public interest in disclosure outweighs public interest in confidentiality. Accordingly, Confidential Attachment A, marked redacted in the draft Resolution, should be made public upon Commission approval of this Resolution.

The existing Qualifying Facility (QF) power purchase agreement (PPA) will be terminated and replaced with an Edison Electric Institute (EEI)-based contract of commensurate term. The new contract has a rate that is significantly lower than that of the existing QF PPA.

Energy Division examined PG&E's request in AL 2562-E from various perspectives:

- accordance with the Commission's expressed preference for renewable resource repowering;
- contingencies contained in the contract;
- value to ratepayers conferred by the replacement of the ISO4 contract;
- reasonableness of the contract;
- fulfillment of PG&E's requirements under the Renewables Portfolio Standard (RPS);
- PRG member involvement;
- validity of protests received and PG&E replies to protests.

The proposed contract is in accord with the Commission's policy preference for repowering existing renewable energy facilities and with a prior ruling on interim renewables procurement. PG&E states that both contracting parties were encouraged by the Commission and TURN to pursue wind repowering. D.03-06-071 specifically encouraged repowering of renewable energy facilities in a manner that increased renewable production yet saved ratepayers money:

“TURN argues that the Commission should specifically require prompt negotiation to resolve what it characterizes as a stalemate around repowering of existing wind facilities. (TURN Opening Brief, p. 51.) We endorse this goal, as the repowering of existing wind facilities in prime locations is a common-sense approach to increasing procurement of renewable energy, with costs that should be lower than for new greenfield projects.” (D.03-06-071, Slip Opinion, p. 57)

The Federal Production Tax Credit was not extended until after PG&E's initial Renewable Portfolio Standard Request for Offer had closed.

The Production Tax Credit (PTC) was enacted in 1992 and provides a 1.8-cent per kilowatt-hour credit, adjusted periodically for inflation, for electricity produced from a wind farm during the first 10 years of its operation. The PTC is critical for financing wind projects.

In the case of this Advice Letter, FPL maintained the existing ISO4 contract due to uncertainty over whether the Federal Government would extend the PTC. By the time the PTC was extended on October 4th 2004, PG&E's initial RFO was closed. Since the extension of the PTC, existing wind farms have the economic incentive to enter into new agreements with the IOU's which result in reduced contract prices on a per MW hour basis.

PG&E is now asking for Commission approval to use the guidelines in the interim ACR issued August 13, 2003 and described in the "Background" section of this Resolution, to enter into a new repowered contract with FPL.

PG&E is interested in a new power purchase agreement with Florida Power and Light because the proposed project will help meet PG&E's Renewable Portfolio Standard requirements at a reasonable price and under reasonable terms, thus conferring value to ratepayers. The repowering of FPL's facility will result in increased electricity production that will apply toward PG&E's RPS requirements. FPL would not be able to claim the federal production tax credit under the existing ISO4 contract. The new contract allows FPL to claim this credit.

PG&E claims all "Environmental Attributes" associated with the project output.

In light of recent rulings by the Federal Energy Regulatory Commission related to Renewable Energy Credits, the new contract explicitly conveys any such credits to PG&E. Thus, PG&E retains all environmental attributes necessary to count the output of the resource toward its RPS requirements. The previous ISO4 was silent on the issue of who owned the Renewable Energy Credits (RECs). By approving this contract, the Commission will assure that PG&E will be able to count the RECs associated with this contract toward PG&E's annual procurement target under RPS.

This Contract does not necessitate the use of Supplemental Energy Payments.

We noted above that repowered facilities must meet specific conditions set forth in Pub. Util. Code Section 383.5(d)(3) in order to receive Supplemental Energy Payments (SEP) in the RPS Program. In accordance with the ACR dated August 13, 2003, the FPL facility will not receive SEPs. Therefore, the conditions of that section do not apply.

The repowering of this facility incorporates California Energy Commission recommendations for bird kill mitigation.

The repowering of these facilities would remove 169 older FloWind turbines and replace them with 31 new Vestas V47 Turbines. The newer turbines will have taller towers, longer blades, and a slower blade speed, which would help to mitigate bird kill.

In this regard, we note that Alameda County approved a Conditional Use Permit on September 25, 2003 for the project citing that the project includes "all feasible measures to mitigate avian bird mortality rates as specified in the Repowering Program, Biological Resources Management Plan, and the Environmental Impact Report."² The County has made findings of "overriding

² Alameda County Zoning Dept., Resolution No. Z-03-117. p.2

significance” for the project indicating that the social benefits obtained from the project would outweigh remaining instances of bird mortality after identified mitigating measures are implemented.³

Notwithstanding these environmental findings by the County, we understand that the Center for Biodiversity filed complaints on November 1, 2004 in the Superior Court of Alameda County (Case #RC04183113) against FPL Energy and FPL Group, and other wind developers in the Altamont Pass area. The complaint states 9 causes of action against all the defendants alleging violations of various state and federal statutes protecting birds, thereby creating, in the view of the plaintiff, a cause of action under Business and Professions Code Section 17200, Unlawful Business Practices.⁴ Energy Division staff has not analyzed the merits of the complaint and includes this information for disclosure purposes only.

The Procurement Review Group either supports or does not oppose the contract amendments.

PG&E provided to its PRG members documentation regarding this contract on September 28, 2004. The PRG members had access to the details of the contracts and amendments. The members either supported or did not oppose this contract.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding:

The 30-day period may be reduced or waived in an unforeseen emergency situation, upon the stipulation of all parties in the proceeding, for an uncontested matter in which the decision grants the relief requested, or for an order seeking temporary injunctive relief.

Energy Division requests that the 30-day comment period for this resolution be reduced because a delay in approving the contract may prevent the developer from repowering a renewable energy facility, a policy goal encouraged by the Commission.

All parties in the proceeding have stipulated to reduce the 30-day comment period required by PU Code section 311(g)(1) to 4 days. Comments are due November 16. No reply comments will be filed.

³ Ibid.

⁴ In regard to this complaint, we note that on Election Day, November 2, 2004, the voters of California approved Proposition 64, which, among other restrictions, limits the use of Business and Professions Code Section 17200 on behalf of the general public to filings by the Attorney General or local prosecutors.

FINDINGS

1. D.02-08-071 directed PG&E, SCE and SDG&E to file an Advice Letter to seek pre-approval of any contract for procurement prior to full RPS implementation.
2. "Assigned Commissioner's Ruling Specifying Criteria for Interim Renewable Energy Solicitations," issued on August 13, 2003, specified criteria for any renewable energy procurement by the utilities prior to full RPS implementation. The Ruling stated that a utility may submit renewable energy contracts for Commission approval via Advice Letter.
3. The Renewables Portfolio Standards program was fully implemented on July 8, 2004 upon the adoption of D.04-07-029 establishing the criteria for least-cost, best-fit.
4. The deadline to submit bids in PG&E's initial RPS RFO was August 23, 2004.
5. The Production Tax Credit, critical for financing the repowering of wind farms, was not extended by the Federal Government until October 4, 2004.
6. PG&E filed Advice Letter 2562-E on October 7, 2004, requesting approval of a renewable energy procurement contract with Florida Power and Light Energy Co., LLC (FPL).
7. The new contract with FPL would replace the existing ISO4 contract currently existing between FPL and PG&E at a reduced cost which benefits ratepayers.
8. The RPS Program requires each utility, including PG&E, to increase the amount of renewable energy in its portfolio to 20 percent by 2017, increasing by a minimum of one percent per year. The Energy Action Plan (EAP), adopted by the Commission and other California agencies, called for acceleration of this goal to reach 20 percent by 2010.
9. Output from repowered facilities qualify for the RPS.
10. The Commission required each utility to establish a Procurement Review Group to review the utilities' interim procurement needs and strategy, proposed procurement process, and selected contracts.
11. The PRG members for PG&E are comprised of: California Department of Water Resources, California Energy Commission, Coalition of California Utility Employees, Natural Resources Defense Council, Office of Ratepayer Advocates, and The Utility Reform Network.
12. PG&E's PRG members either support or do not oppose this contract.
13. Certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583 and General Order (G.O.) 66-C should be disclosed for reasons of public interest.
14. PG&E's proposed contract satisfies the requirements of the ACR of August 13, 2003.

15. Parties have commented in Phase II pre-hearing comments that treatment of repowered facilities should obtain additional Commission guidance due to the unique nature of these facilities that are not always conducive to RPS RFO participation.
16. The repowering of this facility will incorporate CEC bird kill mitigation recommendations.
17. The overall contract price on a net present value basis is less expensive than the current ISO4 contract rate and thus provides benefits to PG&E's ratepayers.
18. The new repowered power purchase agreement counts the increased output of the FPL facility toward PG&E's RPS APT target.
19. Nothing in this Resolution prejudices the development of an RPS Market Price Referent, treatment of repowered facilities under RPS, or any other criteria for evaluating RPS contracts.
20. The terms of the proposed contract are reasonable and should be approved.
21. AL 2562-E was not protested.
22. The Commission should approve AL 2562-E effective today.

THEREFORE IT IS ORDERED THAT:

1. The request of the Pacific Gas and Electric Company to enter into a new renewable energy contract with Florida Power and Light Co., LLC, as requested in Advice Letter AL 2562-E, is approved.
2. Certain material filed under seal pursuant to Public Utilities (Pub. Util.) Code Section 583 and General Order (G.O.) 66-C, and considered for possible disclosure, should be disclosed. Accordingly, Confidential Attachment A, marked redacted in the draft Resolution, should be made public upon Commission Approval of this Resolution.
3. This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on November 19, 2004; the following Commissioners voting favorably thereon:

STEVE LARSON
Executive Director

ATTACHMENT A

(CONFIDENTIAL)